

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

TERRANCE L. FOX,

Plaintiff,

v.

JAMES L. BURNS

Defendant.

CIVIL ACTION

No. 01-2295-CM

MEMORANDUM AND ORDER

Pending before the court is plaintiff Terrance Fox's Motion for Judgment as a Matter of Law and/or Request for New Trial (Doc. 105).

This case was tried May 4-7, 2004, on plaintiff's claim that defendant's truck negligently collided with plaintiff's motorcycle, causing injury to plaintiff. The jury returned a verdict in favor of defendant on May 7, 2004, finding plaintiff 100% at fault for the collision.

I. Legal Standard

A. Rule 50(b) Standard

Judgment as a matter of law under Rule 50(b) "should be cautiously and sparingly granted." *Lucas v. Dover Corp.*, 857 F.2d 1397, 1400 (10th Cir. 1988). The jury's verdict must be affirmed if, "viewing the record in the light most favorable to [the nonmoving party], there is evidence upon which the jury could properly return a verdict for [the nonmoving party]." *Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1546 (10th Cir. 1996). A court does not weigh the evidence, pass on the credibility of the

witnesses, or substitute its conclusions for those of the jury. *Id.* On the other hand, judgment as a matter of law must be granted if there is no legally sufficient evidentiary basis with respect to a claim or defense under the controlling law. *Id.* at 1546-47 (citing Fed. R. Civ. P. 50(a)). A legally sufficient basis requires more than “a scintilla of evidence” favoring the nonmoving party. *Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1547 (10th Cir. 1988).

B. Rule 59 Standard

A motion for a new trial pursuant to Rule 59 is committed to the sound discretion of the trial court. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984); *Hinds v. Gen. Motors Corp.*, 988 F.2d 1039, 1046 (10th Cir. 1993). In reviewing a motion for new trial, the court must view the evidence in the light most favorable to the prevailing party. *Griffin v. Strong*, 983 F.2d 1544, 1546 (10th Cir. 1993). Moreover, the court should “exercise judgment in preference to the automatic reversal for ‘error’ and ignore errors that do not affect the essential fairness of the trial.” *McDonough*, 464 U.S. at 553. Error in the admission or exclusion of evidence, and no error in ruling or order of the court or anything done or omitted by the court can be grounds for granting a new trial unless the error or defect affects the substantial rights of the parties. *Rasmussen Drilling, Inc. v. Kerr-McGee Nuclear Corp.*, 571 F.2d 1144, 1148-49 (10th Cir. 1978); Fed. R. Civ. P. 61. “The party seeking to set aside a jury verdict must demonstrate trial error which constitutes prejudicial error or that the verdict is not based on substantial evidence.” *White v. Conoco, Inc.*, 710 F.2d 1442, 1443 (10th Cir. 1983).

II. Analysis

Plaintiff requests that the court grant judgment as a matter of law under Rule 50 or, in the alternative, a new trial under Rule 59, claiming that the jury erred when it found plaintiff 100% at fault for the collision.

In support of his motion, plaintiff contends that (1) evidence presented by plaintiff at trial indicated that plaintiff took steps to prevent the collision; (2) defendant failed to present evidence contradicting plaintiff's efforts to prevent the collision; (3) defendant, at the time of the collision, admitted fault for the collision and never contested this admission; and (4) while evidence concerning plaintiff's blood alcohol level was presented at trial, none of the evidence indicated that plaintiff's intoxication caused or contributed to the fault of the collision.

Having received all the evidence at trial and applying the legal standards set forth above, the court finds that neither entry of judgment as a matter of law nor an order for a new trial is warranted. Plaintiff has failed to demonstrate that the verdict is not based on substantial evidence. At trial, defendant presented sufficient evidence to support the jury's finding that plaintiff was 100% at fault for the collision and its verdict in favor of defendant. Moreover, the jury was entitled to assess and weigh the credibility of each witness' testimony and the evidence as a whole in reaching its verdict.

IT IS THEREFORE ORDERED that plaintiff's Motion for Judgment as a Matter of Law and/or Request for New Trial (Doc. 105) is denied.

Dated this 16th day of June 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

